



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ADAMS CONSTRUCTION COMPANY
FOR THE
EDGARTON ASPHALT PLANT
VPDES Permit No. VAR05
Storm Water Registration No. 1181**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Adams Construction Company, regarding the Edgerton Asphalt Plant, for the purpose of resolving certain violations of the State Water Control Law, the Regulation, and the above-referenced Permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Adams" means Adams Construction Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries. Adams is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "CSCE" means comprehensive site compliance evaluation.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "DMR" means Discharge Monitoring Report.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Facility" or "Site" means the Edgerton Asphalt Plant located at 604 Middle Road, Freeman, Virginia, from which discharges of stormwater associated with industrial activity occur.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "O&M" means operations and maintenance.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which was reissued on July 1, 2019. The Permit expires on June 30, 2024. Adams applied for registration under the stormwater general permit and was issued Stormwater Registration No. 1181.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

17. "Registration statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Adams owns and operates the Facility located at 604 Middle Road, Freeman, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Adams to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Robinson Creek, in strict compliance with the terms and conditions of the Permit.
3. Robinson Creek is located in the Chowan and Dismal Swamp River Basin. During the 2020 305(b)/303(d) Water Quality Assessment Integrated Report, the tributary was not assessed for any designated use and is therefore considered a Category 3A water. The Facility was not addressed in the Meherrin River and Tributaries Bacterial TMDL, which was approved by the EPA on April 12, 2010 and by the SWCB on September 30, 2010. The tributary is intermittent and should be considered a Tier 1 water.
4. On July 1, 2014, Adams received coverage under the Permit.
5. On November 9, 2018, DEQ staff conducted an inspection of the Site to determine compliance with the Permit. The following describes staff observations during the inspection:

- A number of Discharge Monitoring Reports (DMRs) had not been received at the DEQ-Piedmont Regional Office (PRO). Specifically, the Outfall 001 and Outfall 002 Benchmark Monitoring and Effluent Limitation DMRs for the following were not received at PRO:
July 1, 2014 through December 31, 2014 monitoring period (due January 10, 2015);
January 1, 2016 through June 30, 2016 monitoring period (due July 10, 2016);
July 1, 2016 through December 31, 2016 monitoring period (due January 10, 2017);
January 1, 2017 through June 30, 2017 monitoring period (due July 10, 2017);
July 1, 2017 through December 31, 2017 monitoring period (due January 10, 2018); and
January 1, 2018 through June 30, 2018 monitoring period (due July 10, 2018).
 - A number of DMRs were received at DEQ late. Specifically, the Outfall 001 and Outfall 002 Benchmark Monitoring and Effluent Limitations DMRs for the January 1, 2015 through June 30, 2015, and July 1, 2015 through December 31, 2015 monitoring periods, due at the DEQ-PRO by July 10, 2015 and January 10, 2016 respectively. The DMRs were ultimately received on May 19, 2016.
 - DEQ did not have a record of Adams' participation in DEQ's e-DMR program or a waiver request from electronic reporting requirements.
 - Adams did not have a Storm Water Pollution Prevention Plan (SWPPP) or associated records of routine site inspections, non-stormwater discharge evaluations, stormwater quarterly visual examinations, and annual comprehensive site compliance evaluations available for review during the inspection.
6. Part I.A.1.b of the Permit requires Adams to conduct benchmark monitoring of storm water discharges from the Facility's storm water outfalls for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.
 7. Part I(A)(1)(c) and Part IV(D) of the Permit requires Adams to conduct compliance monitoring subject to stormwater effluent limitations listed in table 120-1.
 8. Part I.A.2.d.(2) of the Permit states monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December. Table 70-4 located in Part I.A.5 indicates that for semiannual monitoring the results are to be reported on a DMR by January 10 and by July 10. In

addition, Part II.C.1 states "The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the Department's regional office." Part II.C.2 states "Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the Department."

9. 9VAC25-31-1020A states that VPDES permittees, facilities, and entities subject to this part, with the exception of those covered by waivers under 9VAC25-31-1010, must electronically submit the following VPDES information (reports, notices, waivers, and certifications) after the start dates listed in Table 1 of this subsection. Table 1, titled 'Start Dates for Electronic Submissions of VPDES Information' requires that electronic submission of DMRs for General VPDES Industrial Stormwater Permits is July 26, 2018.
10. Permit Part III states in part, "A Stormwater Pollution Prevention Plan (SWPPP) shall be developed and implemented for the facility covered by this permit...."
11. Permit Part III.D.2.a states, "The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than stormwater; the authorized non-stormwater discharges described in Part I B, special condition 1; or discharges covered under a separate VPDES permit, other than this permit). The regulation goes on to enumerate the evaluation requirements.
12. Permit Part I.A.1.a.(1) requires Adams to perform and document quarterly visual examinations of the quality of the storm water discharging from the Site's outfalls.
13. Permit Part I.A.1.a.(3) requires Adams to maintain the quarterly visual exam reports on-Site with the SWPPP.
14. Permit Part III.E states, "The permittee shall conduct comprehensive site compliance evaluations at least once each calendar year after coverage under the permit begins. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of control measures. The personnel conducting the evaluations may be either facility employees or outside personnel hired by the facility." The regulation goes on to enumerate the scope of the compliance evaluation.
15. Permit Part III.B.5 states, "Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater."
16. Permit Part II.B.2 states, "The permittee shall retain copies of the SWPPP, including any modifications made during the term of this permit, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for

continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.”

17. Permit Part III F 2. states “The permittee shall retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.”
18. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
19. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
21. The Department has not issued coverage under any permits or certificates to Adams other than under VPDES Permit No. VAR051181.
22. The unnamed tributary of Robinson Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
23. On January 8, 2019, the Department issued a Notice of Violation citing Adams for the violations observed during the November 9, 2018 inspection. On February 12, 2019, the Department held a phone conference with Adams to discuss the NOV and the issuance of a Consent Order.
24. Based on the results of the November 9, 2018 inspection, and the February 12, 2019 meeting, the Board concludes that Adams has violated Permit Parts I.A.1.b, I.A.1.c I.A.2.d.(2), I.C.1, 9VAC25-31-1020A, III, III.D.2.a., I.A.1.a.(1), I.A.1.a.(3), III.E, III.B.5, II.B.2, III F 2., IV(D), Va. Code § 62.1-44.5, and 9 VAC 25-151-70 as noted in paragraph C.5 through C.16 of this Order.
25. A Department review of the Adams file indicates that Adams has submitted the required Permit monitoring documentation and that the violations as described in paragraphs C.5 through C.16, above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Adams, and Adams agrees to pay a civil charge of \$12,540 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Adams shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Adams shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Adams for good cause shown by Adams, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Adams admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Adams consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Adams declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Adams to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Adams shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Adams shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Adams shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Adams. Nevertheless, Adams agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Adams has completed all of the requirements of the Order;
- b. Adams petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Adams.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Adams from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Adams and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Adams certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Adams to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Adams.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Adams voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

Adams Construction Company voluntarily agrees to the issuance of this Order.

Date: 5/13/21 By: Brian Michael Jones Vice President
(Person) (Title)
Adams Construction Company

Commonwealth of Virginia

City/County of Danville

The foregoing document was signed and acknowledged before me this 3rd day of

May, 2021, by Brian Michael Jones who is

Vice President of Adams Construction Company, on behalf of the

corporation.

Chassiti Rene Smith
Notary Public

7670198
Registration No.

My commission expires: 6/30/24

Notary seal:

